



March 13, 2007

ENGROSSED HOUSE BILL No. 1427

DIGEST OF HB 1427 (Updated March 13, 2007 11:11 am - DI 110)

Citations Affected: IC 5-14.

Synopsis: Protecting undercover officer information. Allows a state or local government agency to withhold records from public disclosure that contain certain information about a law enforcement officer operating in an undercover capacity.

Effective: July 1, 2007.

Austin, Tincher, Ruppel, Lawson L
(SENATE SPONSORS — WYSS, LANANE, GARD)

January 16, 2007, read first time and referred to Committee on Public Policy.
January 25, 2007, reported — Do Pass.
January 30, 2007, read second time, ordered engrossed. Engrossed.
February 1, 2007, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 19, 2007, read first time and referred to Committee on Homeland Security,
Transportation and Veterans Affairs.
March 13, 2007, reported favorably — Do Pass.

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EH 1427—LS 7122/DI 87+



March 13, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1427

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.101-2006,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 4. (a) The following public records are excepted
4 from section 3 of this chapter and may not be disclosed by a public
5 agency, unless access to the records is specifically required by a state
6 or federal statute or is ordered by a court under the rules of discovery:
7 (1) Those declared confidential by state statute.
8 (2) Those declared confidential by rule adopted by a public
9 agency under specific authority to classify public records as
10 confidential granted to the public agency by statute.
11 (3) Those required to be kept confidential by federal law.
12 (4) Records containing trade secrets.
13 (5) Confidential financial information obtained, upon request,
14 from a person. However, this does not include information that is
15 filed with or received by a public agency pursuant to state statute.
16 (6) Information concerning research, including actual research
17 documents, conducted under the auspices of an institution of

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higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the board of the Indiana economic development corporation under IC 5-28-16.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the Indiana finance authority, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana

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economic development corporation, the Indiana finance authority, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1.

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However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1

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1 or an act of agricultural terrorism under IC 35-47-12-2;
 2 (B) vulnerability assessments;
 3 (C) risk planning documents;
 4 (D) needs assessments;
 5 (E) threat assessments;
 6 (F) intelligence assessments;
 7 (G) domestic preparedness strategies;
 8 (H) the location of community drinking water wells and
 9 surface water intakes;
 10 (I) the emergency contact information of emergency
 11 responders and volunteers;
 12 (J) infrastructure records that disclose the configuration of
 13 critical systems such as communication, electrical, ventilation,
 14 water, and wastewater systems; and
 15 (K) detailed drawings or specifications of structural elements,
 16 floor plans, and operating, utility, or security systems, whether
 17 in paper or electronic form, of any building or facility located
 18 on an airport (as defined in IC 8-21-1-1) that is owned,
 19 occupied, leased, or maintained by a public agency. A record
 20 described in this clause may not be released for public
 21 inspection by any public agency without the prior approval of
 22 the public agency that owns, occupies, leases, or maintains the
 23 airport. The public agency that owns, occupies, leases, or
 24 maintains the airport:
 25 (i) is responsible for determining whether the public
 26 disclosure of a record or a part of a record has a reasonable
 27 likelihood of threatening public safety by exposing a
 28 vulnerability to terrorist attack; and
 29 (ii) must identify a record described under item (i) and
 30 clearly mark the record as "confidential and not subject to
 31 public disclosure under IC 5-14-3-4(b)(19)(J) without
 32 approval of (insert name of submitting public agency)".
 33 This subdivision does not apply to a record or portion of a record
 34 pertaining to a location or structure owned or protected by a
 35 public agency in the event that an act of terrorism under
 36 IC 35-47-12-1 or an act of agricultural terrorism under
 37 IC 35-47-12-2 has occurred at that location or structure, unless
 38 release of the record or portion of the record would have a
 39 reasonable likelihood of threatening public safety by exposing a
 40 vulnerability of other locations or structures to terrorist attack.
 41 (20) The following personal information concerning a customer
 42 of a municipally owned utility (as defined in IC 8-1-2-1):

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- 1 (A) Telephone number.
 2 (B) Address.
 3 (C) Social Security number.
 4 (21) The following personal information about a complainant
 5 contained in records of a law enforcement agency:
 6 (A) Telephone number.
 7 (B) The complainant's address. However, if the complainant's
 8 address is the location of the suspected crime, infraction,
 9 accident, or complaint reported, the address shall be made
 10 available for public inspection and copying.
 11 **(22) Notwithstanding subdivision (8)(A), the name,**
 12 **compensation, job title, business address, business telephone**
 13 **number, job description, education and training background,**
 14 **previous work experience, or dates of first employment of a**
 15 **law enforcement officer who is operating in an undercover**
 16 **capacity.**
 17 (c) Nothing contained in subsection (b) shall limit or affect the right
 18 of a person to inspect and copy a public record required or directed to
 19 be made by any statute or by any rule of a public agency.
 20 (d) Notwithstanding any other law, a public record that is classified
 21 as confidential, other than a record concerning an adoption, shall be
 22 made available for inspection and copying seventy-five (75) years after
 23 the creation of that record.
 24 (e) Notwithstanding subsection (d) and section 7 of this chapter:
 25 (1) public records subject to IC 5-15 may be destroyed only in
 26 accordance with record retention schedules under IC 5-15; or
 27 (2) public records not subject to IC 5-15 may be destroyed in the
 28 ordinary course of business.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1427, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

VAN HAAFTEN, Chair

Committee Vote: yeas 11, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security, Transportation and Veterans Affairs, to which was referred House Bill No. 1427, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1427 as printed January 26, 2007.)

WYSS, Chairperson

Committee Vote: Yeas 11, Nays 0.

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